



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, ALASKA
P.O. BOX 6898
JBER, ALASKA 99506-0898

NOV 2 2012

District Commander

Honorable Mark Begich
United States Senator
Suite SR-111
Russell Building
Washington, DC 20510

Dear Senator Begich:

This is in response to your October 15, 2012, letter which requested the United States Army Corps of Engineers (USACE) provide you a full briefing on the status of the Chuitna Coal Mine Supplemental Environmental Impact Statement (SEIS), (included in Enclosure 1). We will also address recent concerns expressed by the Native Village of Tyonek (NVT) and their role as a Cooperating Agency (CA).

As lead agency for the SEIS as specified in the National Environmental Policy Act (NEPA) regulations 40 CFR 1501.5, the USACE is required to manage activities relating to the project in an expeditious manner and in conformity with applicable laws and regulations. The CAs are responsible for assisting the lead agency to develop and prepare environmental analyses including portions of the SEIS in which they have special expertise, then make staff available at our request to enhance our interdisciplinary capabilities.

As stated in the January 30, 2002, Council on Environmental Quality, Federal Agency Memorandum regarding Cooperating Agencies Implementation of NEPA (Enclosure 2), in order to ensure that the NEPA process proceeds efficiently, lead agencies are urged to set time limits, identify milestones, assign responsibilities for analysis and documentation, specify the scope and detail of the agencies contribution, and establish other appropriate ground-rules addressing issues such as availability of pre-decisional information.

Over the course of the original Environmental Impact Statement and current SEIS, extensive data collection has occurred to gather baseline resource information within components of the proposed action and alternatives. In accordance with provisions of NEPA, subgroups have been established for the Chuitna Coal SEIS to utilize agency and tribal expertise on specific resource disciplines for which they have legal mandates, permitting authorities, or special expertise to meet our collective statutory responsibilities.

The current MOU between the USACE and CAs establishes that the USACE as the lead federal agency will invite the CAs and/or the applicant to participate in the subgroups, as appropriate. The subgroups currently established for the Chuitna Coal SEIS include cultural resources, hydrology, wetlands functional assessment, and the health impact assessment (HIA). The NVT has representatives and actively participates on the cultural resource and HIA subgroups. Until recently, they have not expressed interest in participating on the hydrology or wetlands functional assessment subgroups.

The USACE understands the importance of ensuring that the CAs have access to and the opportunity to review all materials, procedures, and data in developing reports for the SEIS. It has never been our intention to withhold that information. However, we have set up the subgroups to efficiently utilize their expertise on developing the draft reports. Once the draft reports are completed they are made available to the CAs for their review prior to development of the Preliminary Draft SEIS.

Since we are in the developmental stages of the SEIS, much of the information being gathered is not yet available to the public. During a recent review of a draft functional assessment methodology report by the subgroup, NVT requested a copy of the draft report and without consulting us, retained an independent non-profit corporation to help them provide comments on the report. We are concerned with how NVT proceeded with this review for the following reasons: 1) They are not on the functional assessment subgroup. 2) NVT did not get prior approval from the USACE and the CA team to utilize this subcontractor as part of the SEIS process; and 3) this information was released to a non-profit organization without any coordination with USACE to ensure that it would not be improperly shared with the community at large during this time in the SEIS process, which is currently not open to the public. One of the factors for determining whether to invite, decline or end CA status, includes: "Does the agency release predecisional information (including working drafts) in a manner that undermines or circumvents the agreement to work cooperatively before publishing draft or final analyses and documents?" (see Enclosure 2).

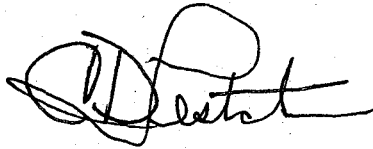
We are concerned about the potential bias that could result from NVT utilizing their own experts during the early phases of developing the SEIS when as a CA they have previously sent members of the public information that was not ripe for release to the public and they have repeatedly voiced opposition to the project and recommended that the USACE deny the permit (see Enclosures 3, 4, and 5). We are currently in the data collection phase of the SEIS and want to ensure that scientific data collection and analysis is the best available science and non-biased. Once the proposed action and alternatives are defined, the environmental baseline has been established within these affected areas, and the impacts are thoroughly analyzed, there will be many future opportunities for NVT to express their concerns about the project's potential impacts on environmental resources and other public interest factors.

As the lead federal agency for the SEIS, our administrative record documents numerous occasions where we have coordinated with NVT to help them engage in their role as a CA. Additionally, we have coordinated with them on several occasions for a Government to Government consultation to discuss their concerns regarding the potential impacts the proposed coal mine and associated facilities may have on their resources and rights.

In summary, we appreciate NVT's active participation as a CA on the Chuitna Coal SEIS and want to continue to work with them to utilize their expertise and input. NVT and all of the other CAs have full access to all of the draft information that is currently being developed. However, to ensure that we are fully utilizing CAs as intended by NEPA regulations and guidance it is neither efficient nor appropriate for them to participate on all of the subgroups. NVT has requested dispute resolution as discussed in the MOU, and we will soon contact them in that regard.

We look forward to providing you with a full briefing and future updates on the status of the Chuitna Coal SEIS process and will be contacting Ms. Andrea Sanders in your Washington D.C. office to coordinate these briefings. If you have further questions, please feel free to contact me, at (907) 753-2504, or if your staff members have additional questions or concerns they may contact Ms. Marcia L. Heer, of my staff, via email at Marcia.L.Heer@usace.army.mil, by mail at Department of the Army, Regulatory Division, Post Office Box 6898, JBER, Alaska 99506-0898, or by phone at (907) 753-5759.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Lestochi', with a large, stylized initial 'D'.

Christopher D. Lestochi
Colonel, Corps of Engineers
District Commander

Enclosures



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

July 28, 1999

MEMORANDUM FOR HEADS OF FEDERAL AGENCIES

FROM: GEORGE T. FRAMPTON, JR. *GTF*
Acting Chair

SUBJECT: ATTACHED MEMORANDUM

Attached please find a memorandum regarding the designation of non-federal agencies to be cooperating agencies in implementing the procedural requirements of the National Environmental Policy Act. If you have any questions concerning this memorandum, please do not hesitate to contact Dinah Bear, the Council on Environmental Quality's General Counsel, at (202) 395-5750.

Attachment



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
WASHINGTON, D.C. 20503

July 28, 1999

MEMORANDUM FOR HEADS OF FEDERAL AGENCIES

FROM: GEORGE T. FRAMPTON, JR. *GTFjr*
Acting Chair

SUBJECT: DESIGNATION OF NON-FEDERAL AGENCIES TO BE COOPERATING
AGENCIES IN IMPLEMENTING THE PROCEDURAL REQUIREMENTS OF
THE NATIONAL ENVIRONMENTAL POLICY ACT

The purpose of this Memorandum is to urge agencies to more actively solicit in the future the participation of state, tribal and local governments as "cooperating agencies" in implementing the environmental impact statement process under the National Environmental Policy Act (NEPA). 40 C.F.R. §1508.5. As soon as practicable, but no later than the scoping process, federal agency officials should identify state, tribal and local government agencies which have jurisdiction by law and or special expertise with respect to reasonable alternatives or significant environmental, social or economic impacts association with a proposed action that requires the preparation of an environmental impact statement¹. The federal agency should then determine whether such non-federal agencies are interested in assuming the responsibilities of becoming a cooperating agency under 40 C.F.R. §1501.6. Where invited tribal, state, or local agencies choose not to become cooperators in the NEPA process, they may still be identified as an internal party on the distribution list, if they so desire.

¹ While CEQ has not attempted to identify every state, tribal and local government agencies with jurisdiction by law or special expertise (nor do we propose to do so), agencies may wish to refer to Appendix II to the CEQ regulations, "Federal and Federal-State Agencies with Jurisdiction by Law or Special Expertise on Environmental Quality Issues", Vol. 49 *Federal Register*, No. 247, 49754-49778 (December 21, 1984), for guidance as to the types of actions and expertise that are relevant in determining appropriate cooperating agencies. Please contact CEQ for copies, if needed.

The benefits of granting cooperating agency status include disclosure of relevant information early in the analytical process, receipt of technical expertise and staff support, avoidance of duplication with state, tribal and local procedures, and establishment of a mechanism for addressing intergovernmental issues. If a non-federal agency agrees to become a cooperating agency, agencies are encouraged to document (e.g., in a memorandum of agreement) their specific expectations, roles and responsibilities, including such issues as preparation of analysis, schedules, availability of pre-decisional information and other issues. Cooperating agencies are normally expected to use their own funds for routine activities, but to the extent available funds permit, the lead agency should fund or include in its budget requests funding for major activities or analyses that it requests from cooperating agencies. 40 C.F.R. §1501.6(b)(5).

Agencies are reminded that cooperating agency status neither enlarges nor diminishes the decisionmaking authority of either federal or non-federal entities. However, cooperating agency relationships with state, tribal and local agencies help to achieve the direction set forth in NEPA to work with other levels of government "to promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." Considering NEPA's mandate and the authority granted in federal regulation to allow for cooperating agency status for state, tribal and local agencies, cooperator status for appropriate non-federal agencies should be routinely solicited.

January 30, 2002

MEMORANDUM FOR THE HEADS OF FEDERAL AGENCIES

FROM: JAMES CONNAUGHTON
Chair

SUBJECT: COOPERATING AGENCIES IN IMPLEMENTING THE PROCEDURAL
REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

The purpose of this Memorandum is to ensure that all Federal agencies are actively considering designation of Federal and non-federal cooperating agencies in the preparation of analyses and documentation required by the National Environmental Policy Act (NEPA), and to ensure that Federal agencies actively participate as cooperating agencies in other agency's NEPA processes.¹ The CEQ regulations addressing cooperating agencies status (40 C.F.R. §§ 1501.6 & 1508.5) implement the NEPA mandate that Federal agencies responsible for preparing NEPA analyses and documentation do so "in cooperation with State and local governments" and other agencies with jurisdiction by law or special expertise. (42 U.S.C. §§ 4331(a), 4332(2)). Despite previous memoranda and guidance from CEQ, some agencies remain reluctant to engage other Federal and non-federal agencies as a cooperating agency.² In addition, some Federal agencies remain reluctant to assume the role of a cooperating agency, resulting in an inconsistent implementation of NEPA.

Studies regarding the efficiency, effectiveness, and value of NEPA analyses conclude that stakeholder involvement is important in ensuring decisionmakers have the environmental information necessary to make informed and timely decisions efficiently.³ Cooperating agency status is a major component of agency stakeholder involvement that neither enlarges nor diminishes the decisionmaking authority of any agency involved in the NEPA process. This

¹ Cooperating agency status under NEPA is not equivalent to other requirements calling for an agency to engage another governmental entity in a consultation or coordination process (e.g., Endangered Species Act section 7, National Historic Preservation Act section 106). Agencies are urged to integrate NEPA requirements with other environmental review and consultation requirements (40 C.F.R. § 1500.2(c)); and reminded that not establishing or ending cooperating agency status does not satisfy or end those other requirements.

² Memorandum for Heads of Federal Agencies, Subject: Designation of Non-Federal Agencies to be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act, dated July 28, 1999; Memorandum for Federal NEPA Liaisons, Federal, State, and Local Officials and Other Persons Involved in the NEPA Process, Subject: Questions and Answers About the NEPA Regulations (NEPA's Forty Most Asked Questions), dated March 16, 1981, published at 46 Fed. Reg. 18026 (Mar. 23, 1981), as amended.

³ E.g., *The National Environmental Policy Act – A Study of its Effectiveness After Twenty-Five Years*, CEQ, January 1997

memo does not expand requirements or responsibilities beyond those found in current laws and regulations, nor does it require an agency to provide financial assistance to a cooperating agency.

The benefits of enhanced cooperating agency participation in the preparation of NEPA analyses include: disclosing relevant information early in the analytical process; applying available technical expertise and staff support; avoiding duplication with other Federal, State, Tribal and local procedures; and establishing a mechanism for addressing intergovernmental issues. Other benefits of enhanced cooperating agency participation include fostering intra- and intergovernmental trust (e.g., partnerships at the community level) and a common understanding and appreciation for various governmental roles in the NEPA process, as well as enhancing agencies' ability to adopt environmental documents. It is incumbent on Federal agency officials to identify as early as practicable in the environmental planning process those Federal, State, Tribal and local government agencies that have jurisdiction by law and special expertise with respect to all reasonable alternatives or significant environmental, social or economic impacts associated with a proposed action that requires NEPA analysis.

The Federal agency responsible for the NEPA analysis should determine whether such agencies are interested and appear capable of assuming the responsibilities of becoming a cooperating agency under 40 C.F.R. § 1501.6. Whenever invited Federal, State, Tribal and local agencies elect not to become cooperating agencies, they should still be considered for inclusion in interdisciplinary teams engaged in the NEPA process and on distribution lists for review and comment on the NEPA documents. Federal agencies declining to accept cooperating agency status in whole or in part are obligated to respond to the request and provide a copy of their response to the Council. (40 C.F.R. § 1501.6(c)).

In order to assure that the NEPA process proceeds efficiently, agencies responsible for NEPA analysis are urged to set time limits, identify milestones, assign responsibilities for analysis and documentation, specify the scope and detail of the cooperating agency's contribution, and establish other appropriate ground-rules addressing issues such as availability of pre-decisional information. Agencies are encouraged in appropriate cases to consider documenting their expectations, roles and responsibilities (e.g., Memorandum of Agreement or correspondence). Establishing such a relationship neither creates a requirement nor constitutes a presumption that a lead agency provides financial assistance to a cooperating agency.

Once cooperating agency status has been extended and accepted, circumstances may arise when it is appropriate for either the lead or cooperating agency to consider ending cooperating agency status. This Memorandum provides factors to consider when deciding whether to invite, accept or end cooperating agency status. These factors are neither intended to be all-inclusive nor a rote test. Each determination should be made on a case-by-case basis considering all relevant information and factors, including requirements imposed on State, Tribal and local governments by their governing statutes and authorities. We rely upon you to ensure the reasoned use of agency discretion and to articulate and document the bases for extending, declining or ending cooperating agency status. The basis and determination should be included in the administrative record.

CEQ regulations do not explicitly discuss cooperating agencies in the context of Environmental Assessments (EAs) because of the expectation that EAs will normally be brief, concise documents that would not warrant use of formal cooperating agency status. However, agencies do at times – particularly in the context of integrating compliance with other environmental review laws – develop EAs of greater length and complexity than those required under the CEQ regulations. While we continue to be concerned about needlessly lengthy EAs (that may, at times, indicate the need to prepare an Environmental Impact Statement (EIS)), we recognize that there are times when cooperating agencies will be useful in the context of EAs. For this reason, this guidance is recommended for preparing EAs. However, this guidance does not change the basic distinction between EISs and EAs set forth in the regulations or prior guidance.

To measure our progress in addressing the issue of cooperating agency status, by October 31, 2002 agencies of the Federal government responsible for preparing NEPA analyses (e.g., the lead agency) shall provide the first bi-annual report regarding all EISs and EAs begun during the six-month period between March 1, 2002 and August 31, 2002. This is a periodic reporting requirement with the next report covering the September 2002 – February 2003 period due on April 30, 2003. For EISs, the report shall identify: the title; potential cooperating agencies; agencies invited to participate as cooperating agencies; agencies that requested cooperating agency status; agencies which accepted cooperating agency status; agencies whose cooperating agency status ended; and the current status of the EIS. A sample reporting form is at attachment 2. For EAs, the report shall provide the number of EAs and those involving cooperating agency(s) as described in attachment 2. States, Tribes, and units of local governments that have received authority by Federal law to assume the responsibilities for preparing NEPA analyses are encouraged to comply with these reporting requirements.

If you have any questions concerning this memorandum, please contact Horst G. Greczmiel, Associate Director for NEPA Oversight at 202-395-5750, Horst_Greczmiel@ceq.eop.gov, or 202-456-0753 (fax).

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Factors for Determining Whether to Invite, Decline or End Cooperating Agency Status

1. Jurisdiction by law (40 C.F.R. § 1508.15) – for example, agencies with the authority to grant permits for implementing the action [federal agencies shall be a cooperating agency (1501.6); non-federal agencies may be invited (40 C.F.R. § 1508.5)]:

- Does the agency have the authority to approve a proposal or a portion of a proposal?
- Does the agency have the authority to veto a proposal or a portion of a proposal?
- Does the agency have the authority to finance a proposal or a portion of a proposal?

2. Special expertise (40 C.F.R. § 1508.26) – cooperating agency status for specific purposes linked to special expertise requires more than an interest in a proposed action [federal and non-federal agencies may be requested (40 C.F.R. §§ 1501.6 & 1508.5)]:

- Does the cooperating agency have the expertise needed to help the lead agency meet a statutory responsibility?
- Does the cooperating agency have the expertise developed to carry out an agency mission?
- Does the cooperating agency have the related program expertise or experience?
- Does the cooperating agency have the expertise regarding the proposed actions' relationship to the objectives of regional, State and local land use plans, policies and controls (1502.16(c))?

3. Do the agencies understand what cooperating agency status means and can they legally enter into an agreement to be a cooperating agency?

4. Can the cooperating agency participate during scoping and/or throughout the preparation of the analysis and documentation as necessary and meet milestones established for completing the process?

5. Can the cooperating agency, in a timely manner, aid in:

- identifying significant environmental issues [including aspects of the human environment (40 C.F.R. § 1508.14), including natural, social, economic, energy, urban quality, historic and cultural issues (40 C.F.R. § 1502.16)]?
- eliminating minor issues from further study?
- identifying issues previously the subject of environmental review or study?
- identifying the proposed actions' relationship to the objectives of regional, State and local land use plans, policies and controls (1502.16(c))?

(40 C.F.R. §§ 1501.1(d) and 1501.7)

6. Can the cooperating agency assist in preparing portions of the review and analysis and resolving significant environmental issues to support scheduling and critical milestones?

7. Can the cooperating agency provide resources to support scheduling and critical milestones such as:

- personnel? Consider all forms of assistance (e.g., data gathering; surveying; compilation; research.
- expertise? This includes technical or subject matter expertise.
- funding? Examples include funding for personnel, travel and studies. Normally, the cooperating agency will provide the funding; to the extent available funds permit, the lead agency shall fund or include in budget requests funding for an analyses the lead agency requests from cooperating agencies. Alternatives to travel, such as telephonic or video conferencing, should be considered especially when funding constrains participation.
- models and databases? Consider consistency and compatibility with lead and other cooperating agencies' methodologies.
- facilities, equipment and other services? This type of support is especially relevant for smaller governmental entities with limited budgets.

8. Does the agency provide adequate lead-time for review and do the other agencies provide adequate time for review of documents, issues and analyses? For example, are either the lead or cooperating agencies unable or unwilling to consistently participate in meetings in a timely fashion after adequate time for review of documents, issues and analyses?

9. Can the cooperating agency(s) accept the lead agency's final decisionmaking authority regarding the scope of the analysis, including authority to define the purpose and need for the proposed action? For example, is an agency unable or unwilling to develop information/analysis of alternatives they favor and disfavor?

10. Are the agency(s) able and willing to provide data and rationale underlying the analyses or assessment of alternatives?

11. Does the agency release predecisional information (including working drafts) in a manner that undermines or circumvents the agreement to work cooperatively before publishing draft or final analyses and documents? Disagreeing with the published draft or final analysis should not be a ground for ending cooperating status. Agencies must be alert to situations where state law requires release of information.

12. Does the agency consistently misrepresent the process or the findings presented in the analysis and documentation?

The factors provided for extending cooperating agency status are not intended to be all-inclusive. Moreover, satisfying all the factors is not required and satisfying one may be sufficient. Each determination should be made on a case-by-case basis considering all relevant information and factors.

February 4, 2002

MEMORANDUM FOR TRIBAL LEADERS

FROM: JAMES CONNAUGHTON
Chair

SUBJECT: COOPERATING AGENCIES IN IMPLEMENTING THE PROCEDURAL
REQUIREMENTS OF THE NATIONAL ENVIRONMENTAL POLICY ACT

The Council on Environmental Quality (CEQ) regulations addressing cooperating agencies status¹ implement the NEPA mandate that Federal agencies responsible for preparing NEPA analyses and documentation do so "in cooperation with State and local governments" and other agencies with jurisdiction by law or special expertise.² The attached memorandum reminds Federal agencies of the importance of including Tribes in the NEPA process and emphasizes the importance of establishing cooperating agency status when appropriate.

In cases where you have either jurisdiction by law or special expertise³ you should consider accepting or requesting an invitation to participate in the NEPA process as a cooperating agency. In those cases where cooperating agency status is not appropriate, you should consider opportunities to provide information and comments to the agencies preparing the NEPA analysis and documentation. CEQ supports your involvement in ensuring that decisionmakers have the environmental information necessary to make informed and timely decisions efficiently.

The benefits of enhanced cooperating agency participation in the preparation of Environmental Assessments (EAs) and Environmental Impact Statements (EISs), described in the enclosed memorandum include fostering intergovernmental trust (e.g., partnerships at the community level) and a common understanding and appreciation for various governmental roles in the NEPA process. It is important for you to consider your authority and capacity to assume the responsibilities of a cooperating agency and to remember that your role in the environmental analysis neither enlarges nor diminishes the final decisionmaking authority of any agency involved in the NEPA process.

If you have any questions concerning this memorandum, please contact Horst G. Greczmiel, Associate Director for NEPA Oversight at 202-395-5750, Horst_Greczmiel@ceq.eop.gov, or 202-456-0753 (fax).

¹ 40 C.F.R. §§ 1501.6 & 1508.5

² 42 U.S.C. §§ 4331(a), 4332(2)

³ These terms are described in the enclosed memorandum and in the factors described in attachment 1 to the enclosed memorandum.

Enclosure



NEWS RELEASE

EXECUTIVE OFFICE OF THE PRESIDENT COUNCIL ON ENVIRONMENTAL QUALITY

730 Jackson Place, NW, Washington, DC 20503

President George W. Bush
For Release: Immediate
February 5, 2002

James L. Connaughton, Chairman
Contact: Sam Thornstrom
(202) 456-6224

CEQ Issues Guidance Memorandum on Cooperating Agency Status

White House Council on Environmental Quality (CEQ) Chairman James L. Connaughton has sent a memorandum to the heads of all federal agencies which emphasizes the importance of including state, tribal and local governmental entities in the preparation of federal Environmental Impact Statements (EISs). This guidance document is designed to ensure that state, tribal and local governments are included as "cooperating agencies" whenever appropriate during federal environmental reviews. The guidance is also being sent to tribal and state and local governmental organizations.

Chairman Connaughton said, "This memorandum reinforces President Bush's commitment to working with state, tribal and local governments and fostering a collaborative approach when making federal decisions that effect local communities. In situations where these government actors have particular expertise or share jurisdiction over a decision of the federal government, they should be formally welcomed as partners in the environmental review process."

The National Environmental Policy Act (NEPA) requires federal agencies to analyze the environmental aspects of their proposed projects, activities, and other actions with potential environmental impacts. NEPA also requires federal agencies responsible for preparing NEPA analyses and documentation do so in cooperation with state and local governments and other agencies with jurisdiction by law or special expertise. CEQ's "cooperating agency" regulations implement that requirement; today's memo clarifies the application of that rule.

The CEQ memorandum noted the benefits of enhanced cooperating agency participation, which include disclosing relevant information early in the analytical process; applying available expertise and support; avoiding duplication with other federal, state, tribal and local procedures; and fostering intergovernmental cooperation and trust. In cases where cooperating agency status is not possible, Connaughton urged agencies to consider including federal, state, tribal and local agencies in the interdisciplinary teams engaged in the NEPA process and to provide them adequate opportunities to review and comment on the environmental analyses.

Additional information about the National Environmental Policy Act and this memorandum can be found on the "NEPAnet" link on the CEQ web site at www.whitehouse.gov/ceq or by contacting Horst G. Greczmiel, Associate Director for NEPA Oversight at (202) 395-5750.

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REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
U.S. ARMY ENGINEER DISTRICT, ALASKA
P.O. BOX 6898
JBER, ALASKA 99506-0898
SEP 21 2011

District Engineer

President Frank Standifer III
Native Village of Tyonek
Post Office Box 82009
Tyonek, Alaska 99682

Dear President Standifer:

This is in response your letter dated August 30, 2011, which was received by the U.S. Army Corps of Engineers on September 9, 2011. Your letter provides additional information regarding the roles and responsibilities of Mr. Rob Rosenfeld as an advisor to the Native Village of Tyonek (NVT) with respect to the Chuitna Coal Project Supplemental Environmental Impact Statement (SEIS) process.

The Corps now understands that Mr. Rosenfeld is permitted to attend all cooperating agency and government-to-government meetings pertaining to the Chuitna Coal Project SEIS on the behalf of NVT; including, both teleconferences and in-person meetings. However, this is inconsistent with the message you recently presented the Corps on two occasions following our letter dated August 15, 2011, regarding the participation of Mr. Rosenfeld:

- During a face-to-face discussion between the Corps and NVT on August 19, 2011, the Corps raised concerns that Mr. Rosenfeld had acted above and beyond his role as it was clearly defined in NVT's letter dated May 19, 2011. The Corps shared their concerns with NVT that Mr. Rosenfeld had acted as a member of the public during meetings regarding the Chuitna SEIS, rather than as an advisor to NVT. NVT agreed to discuss the issue with Mr. Rosenfeld. After the meeting on August 19, 2011, it was the Corps' understanding that Mr. Rosenfeld would no longer represent NVT in meetings with the Corps.
- A week and a half later, during the SEIS Cooperating Agency meeting on August 31, 2011, you informed the Corps and the SEIS Cooperating Agencies that Mr. Rosenfeld should be removed from the SEIS contact list and that you would be the primary point of contact for NVT. You noted that you would coordinate with Mr. Rosenfeld, as needed, and that Ms. Jessica Standifer would be the backup point of contact for NVT.

Based upon the above information, and because your letter dated August 30, 2011, stating that Mr. Rosenfeld may represent NVT in all matters regarding Chuitna SEIS is dated before your verbal request on August 31, 2011, to remove Mr. Rosenfeld from the SEIS contact list, we are requesting that you provide additional clarification regarding Mr. Rosenfeld's role as advisor to NVT on the Chuitna Coal Project SEIS. Our goal is to communicate with NVT openly and freely without ambiguity or confusion.

-2-

On a related note, on September 14, 2011, Ms. Serena Sweet received two emails from Mr. Rosenfeld regarding official discussions related to the SEIS process (see enclosed copies). In addition to the NVT points of contacts, a representative of the public was also copied on these emails. As described in our August 15, 2011, letter, this behavior poses a serious legal problem for the Corps because the SEIS development process currently is not open for public review and comment. The Corps therefore requests that NVT remind Mr. Rosenfeld that while acting on behalf of the NVT, it is important that he be mindful that members of the public are not to be included in the SEIS development process until appropriate times, such as a public comment period.

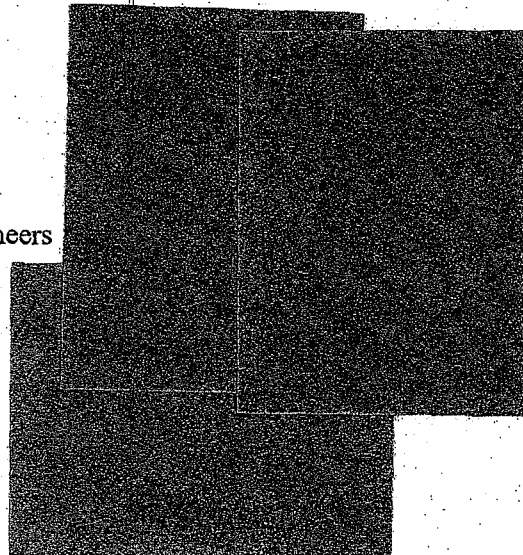
Please contact me directly if I can be of further assistance, or detailed information can be obtained by contacting Ms. Sweet via email at Serena.E.Sweet@usace.army.mil, by mail at the letterhead address, by phone at (907) 753-2819, or toll free from within Alaska at (800) 478-2712.

Sincerely,

ORIGINAL SIGNED

Reinhard W. Koenig
Colonel, Corps of Engineers
District Engineer

Encl



Native Village of Tyonek – IRA Council Submission - Comments on Draft Sections 2.2, 2.4 & 2.7

Native Village of Tyonek	NVT – IRA Council	2.2.74	2-85	PRC's Proposed actions Lines 2-40	Chuitna Coal Mine Reclamation: This proposed section needs to be written in detail with accompanying diagrams. Several successful examples of salmon bearing - stream and river restoration initiatives in subarctic environments must be included to demonstrate these experimental approaches will guarantee the return of all salmon populations to pre-mining numbers without the necessity of a fish hatchery. In addition, a complete assessment of how the water table / aquifer can be restored to the original state after 25 years of dewatering is necessary. Lastly, a full explanation is needed to describe how and where alternative material will come from to replace the millions of tons of coal that will be removed in a 25 year period of time.
Native Village of Tyonek	NVT – IRA Council	2.2.74	2-87	PRC's Proposed actions Lines 2-5	The assertion that salmon spawning will resume based on these proposed actions is completely hypothetical with no evidence being provided of similar successful efforts occurring on salmon bearing rivers or streams in subarctic environments.
Native Village of Tyonek	NVT – IRA Council	2.2.7.4	2-90	PRC's Proposed actions Lines 28-42	The criteria for successfully restoring streams to their original state is not adequate. It is necessary to include the criteria that requires the return of all salmon runs to original numbers and health.
Native Village of Tyonek	NVT – IRA Council			Summary	NVT recommends that the "NO ACTION" alternative, be selected by the Army Corps of Engineers and the PAC RIM's permit to develop the proposed Chuitna Coal Mine be denied.
Native Village of Tyonek	NVT – IRA Council				
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Native Village of Tyonek	NVT – IRA Council				

Morgan, Shannon R POA

From: Shearer, Amanda M POA
Sent: Thursday, August 23, 2012 12:19 PM
To: Heer, Marcia L POA; Reynolds, Georgeie HQ02
Cc: Stolzman, Robert L POA; McCoy, Shane POA; Meyers, Steve POA; Morgan, Shannon R POA
Subject: FW: Tyonek Meeting Request with Georgeanne Reynolds, Don Chapman and William James (UNCLASSIFIED)

Classification: UNCLASSIFIED
 Caveats: NONE

Hi Marcia - Just got this e-mail from Georgeie Reynolds, USACE Senior Tribal Liaison at HQ.

Hi Georgeie - I have been working closely with Marcia Heer, the Project Manager for the development of the Chuitna Coal SEIS. I've also cc'd her backup Shane McCoy, Shannon Morgan the team leader, and Steve Meyers who is acting Regulatory Chief until the position is filled. FYSA: Native Village of Tyonek is also a Cooperating Agency on the SEIS, although I do not see that mentioned in the e-mail below. Should I set up a teleconference for you to discuss with POA team?

V/R
 Amanda

-----Original Message-----

From: Reynolds, Georgeie HQ02
Sent: Thursday, August 23, 2012 11:46 AM
To: James, William L LRN
Cc: Reynolds, Georgeie HQ02; Moyer, Jennifer A HQ02; Shearer, Amanda M POA
Subject: FW: Tyonek Meeting Request with Georgeanne Reynolds, Don Chapman and William James (UNCLASSIFIED)

Classification: UNCLASSIFIED
 Caveats: NONE

We need to talk.....

Georgeie Reynolds, Ph.D.
 Senior Tribal Liaison
 Leader, Tribal Nations Community of Practice
 US Army Corps of Engineers
 202 761-5855 (fon)
 202 761-4370 (fax)

For more information on the Corps' Tribal program, go to:
<http://www.usace.army.mil/Missions/CivilWorks/TribalIssues.aspx>

-----Original Message-----

From: Rob Rosenfeld [mailto:robrosey@gmail.com]
Sent: Thursday, August 23, 2012 1:56 PM
To: Reynolds, Georgeie HQ02
Subject: Tyonek Meeting Request with Georgeanne Reynolds, Don Chapman and William James

MEETING REQUEST:

FROM: NATIVE VILLAGE OF TYONEK (NVT)- IRA COUNCIL - TYONEK

ATTENDEES: NVT VICE PRESIDENT RANDY STANDIFER II

ROB ROSENFELD / NATIVE AMERICAN RIGHTS FUND CONSULTANT

Heather Kendall-Miller / Native American Rights Fund / Alaska Executive Director and
NVT Attorney will be on-line telephonically

WHEN: 3:00pm on Oct 4th, or back up date: OCTOBER 11:30 am 3rd or

WHERE: WASHINGTON D.C.

CONTACT: <mailto:robrosey@gmail.com> <mailto:robrosey@gmail.com> robrosey@gmail.com,
(907)388-2683 <tel:%28907%29388-2683> , (907)235-7528 <tel:%28907%29235-7528>

PURPOSE: To discuss the proposed Chuitna Coal Mine which plans to remove 13.8 miles of
healthy salmon tributary for the largest Coal Mine in Alaska history, which threatens the
survival of the Native peoples of Tyonek.

The NVT - IRA Council is a federally recognized Tribe and the peoples of Tyonek have
thrived off the marine environment, rivers, and lands - while residing along the beaches of
the Cook Inlet for thousands of years.

The Tyonek native peoples are referred to as the Tubughna, "Beach People". We are
located 45 air miles from Anchorage across the Cook Inlet in the village of Tyonek. The NVT
relies on a subsistence lifestyle that is centuries old, and wild, healthy salmon are a vital
component of NVT's traditional way of life.

Pac Rim Coal, a Delaware corporation, funded by Texas multi-millionaires is actively seeking state and federal permits to operate the Chuitna coal strip mine - which would be Alaska's largest coal strip mine on the western shores of Cook Inlet near the communities of Tyonek and Beluga. The Pac Rim proposal has been pushed by the Alaska State Department of Natural Resources with the goal of selling coal to Japan and China, which will contribute to Climate Change, pollute our waters, cover our fragile wetlands and waters with coal dust, destroy sacred cultural sites and the Chuitna River Salmon habitat and result in Mercury travelling back to Alaska - further polluting our lands. Not surprising, a door-to-door poll of the 200 residents of the Native Village of Tyonek revealed that 98% of Villagers oppose the Chuitna coal mine. Nonetheless, government agencies continue to press forward with permitting the project. In response, the NVT has formally passed a resolution clearly stating our opposition.

Alaska stands on the front lines of rapid climate change, and from receding glaciers, warming salmon streams and eroding coastlines, the "Last Frontier" is feeling the disproportionate effects of global warming. Yet Alaska also possesses enormous undeveloped coal reserves, and despite the fact coal produces the most greenhouse gases of any traditional fossil fuel, state and federal agencies are actively working with outside corporations to mine and export Alaskan coal for energy-hungry Asian markets. While Alaska has experienced a host of proposed coal-related projects over the past six years, the Chuitna coal strip mine outside Anchorage poses the most imminent and substantial risks of any project in the state. If the Chuitna project moves forward, it will lock in the infrastructure and export markets that will open massive tidewater coal reserves for Asian markets clamoring for "cheap" and reliable energy.

Equally important, the Chuitna coal mine would be the first project in Alaskan history to mine completely through a wild salmon stream (the River supports all five species of Wild Pacific salmon). As a result, this development poses a dangerous precedent across the state, where growing pressures to mine coal, gold, and copper increasingly conflict with sustainable salmon resources. If the Chuitna Coal Mine is permitted, the proposed Pebble Mine will surely gain significant ground, inevitably making it easier to also become permitted.

The intent of our request to meet with key federal employees in leadership roles to assist in understanding the complex regulatory process for the Chuitna Coal Strip Mine project, which would be the first strip mine in state history allowed to mine directly through 13.8 miles of salmon spawning and rearing habitat, completely removing the streambed from bank to bank to a depth of 350 feet! If permitted Avatar of Alaska would result.

We request your consideration for a meeting while we are in Washington D.C. We request technical assistance to ensure our opposition is well known by all permitting agencies and to stop the permit from happening. We are confident that our status as a sovereign tribal government will be the key to stopping the permit from being approved. Tyonek has a long, proud history standing up to corporate interlopers, having successfully fought back oil and gas interests prior to Alaska statehood. Now, Tyonek faces an even more serious threat: the complete destruction of the Chuitna River and the surrounding watershed which define the Tribe's identity, culture and way of life. The current project predicts a minimum 25 year mine life with a production rate of up to 12 million tons a year.

If the Chuitna mine is developed thousands of acres of wetlands will be drained, permanently degrading the headwaters of streams that flow into the Chuitna River. According to fisheries biologists and restoration experts the level of impact PacRim proposes will deem reclamation functionally impossible. Middle Creek, a tributary to the Chuit River (recognized as important to salmon by the Alaska Department of Fish and Game) will be destroyed and adjacent streams will have their water flows significantly altered. There is *NO* law in Alaska that bans the wholesale removal of a salmon stream; the decision is left to the discretion of state agency personnel. If the Chuitna coal strip mine is permitted a precedent will be set that has far reaching implications to all anadromous streams across the state - if they can mine through the Chuitna Watershed tributaries they can mine through any salmon stream on or adjacent to Native lands.

Tribal Governments throughout the United States and Alaska are uniquely and powerfully positioned to lead advocacy campaigns to stop unwise development. It is critical for the regulators to be aware of the special powers that Indigenous Governments possess, which have been reaffirmed by each President of the United States in the form of Executive Orders.

The Native Village of Tyonek is coming to Washington D.C. to meet on a government to government basis with the leadership of all federal permitting agencies associated with the project.

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